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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,678	11/21/2003	Stefan Fokken	038827.270793	1309

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EXAMINER

ANTHONY, JOSEPH DAVID

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,678

Applicant(s)

FOKKEN ET AL.

Examiner

Joseph D. Anthony

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 8-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7, drawn to a stabilizer composition, classified in class 252, subclass 182.29.
 - II. Claims 8-14, drawn to a polymer composition comprising a stabilizer composition, classified in class 524, subclass 399+.
 - III. Claims 15-20, drawn to a process for making a stabilizer composition, classified in class 252, subclass 182.32.
 - IV. Claim 21, drawn to a stabilizer composition prepared by a certain process, classified in class 252, subclass 182.11.
 - V. Claim 22, drawn to drawn to a polymer composition including the stabilizer of claim 21, classified in class 524, subclass 399+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as mutually exclusive inventions in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product and the inventions are patentably distinct. In the instant case, the intermediate product is deemed to be useful as a bleaching composition to bleach textiles and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of

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record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions IV and V are related as mutually exclusive inventions in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product, and the inventions are patentably distinct. In the instant case, the intermediate product is deemed to be useful as a bleaching composition to bleach textiles and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions IV and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by adding and mixing preformed sodium chlorate to preformed calcium hydroxide.

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5. Inventions I and IV are patentable distinct because Invention I requires that the composition comprises a perchlorate salt in combination with an organic acid, inorganic acid or inorganic base, whereas Invention IV does not require any perchlorate salt and thus reads on a composition that comprises a chlorate salt in combination with an organic acid, inorganic acid or inorganic base.
6. Inventions I and III are patentable distinct since the process of making of invention III is in no way limited to making the composition of Invention I. See paragraph 5 above for details.
7. Inventions III and V are patentable distinct since the process of making claims of Invention III do not make the polymer composition of Invention V, but rather make a component of the polymer composition claimed in invention V.
8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
9. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
10. During a telephone conversation with Andrew T. Meunier on 8/9/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 2 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 5 are both indefinite in regards to the scope of the claimed subject matter. The problem here is the use of the phrase "further comprising and alkaline earth metal hydroxide", because independent claim 1 already requires a component selected from an inorganic acid, an organic acid, or an inorganic base. Since an alkaline earth metal hydroxide is an inorganic base, the use of the phrase "further comprising" renders the claims indefinite. Claim 6 is being rejected because it is dependent on a rejected base claim.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Lozier U.S. Patent Number 2,993,946 or Meyers et al. U.S. Patent Number 3,355,328 or Rosenberg U.S. Patent Number 3,615,179 or Milan U.S. Patent Number 3,307,903.

Please note for all the below prior-art rejections that applicant's claimed crystallites concentration and size ranges are deemed to be fully meet since the water soluble perchlorate salts used in the taught aqueous solutions are all solvated and are thus not in crystallite form.

Lozier teaches primary cells. Applicant's claims are deemed to be anticipated over Example 1 wherein an aqueous electrolyte solution is that that comprises water, magnesium perchlorate, lithium chromate, and magnesium hydroxide.

Meyers et al teach an electric current-producing cell with buffer zone. Applicant's claims are deemed to be anticipated over Examples II-III wherein an aqueous anolyte solution is made that comprises magnesium perchlorate, magnesium hydroxide, and water.

Rosenberg teaches preparation of magnesium perchlorate. Applicant's claims are deemed to be anticipated over Examples 1-3 wherein magnesium perchlorate is made from an aqueous composition that comprises reacting magnesium turnings with water to make magnesium hydroxide, followed by the addition of perchloric acid to make an aqueous mixture of magnesium

perchlorate and magnesium hydroxide, followed the further addition of small amounts of magnesium carbonate.

Lazari teaches a process for the preparation of high purity ammonium perchlorate. Applicant's claims are deemed to be anticipated over Example 1 wherein ammonium perchlorate is prepared by first purifying an aqueous sodium perchlorate solution by the addition of barium hydroxide (Note: this solution anticipates all of applicant's claims), followed by the further addition of sulfuric acid (Note: this solution also anticipates all of applicant's claims), followed by the addition of ammonia to make the final aqueous ammonium perchlorate solution (note: this solution also anticipates all of applicant's claims).

Prior-Art Cited But Not Applied

16. Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

Examiner Information

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. This examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 6:30 p.m. in the eastern time zone. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (703) 872-9306.

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All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.



Joseph D. Anthony
Primary Patent Examiner
Art Unit 1714

8/23/04